

NO. 3 08 1046  
(NO. 3:08-mc-0154)  
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According to his complaint, in October, 1998, the Plaintiff was convicted of selling cocaine near a school zone and received a sentence of fifteen (15) years in prison. (Docket Entry No.1, Complaint at Exhibit No.15). Plaintiff alleges that after serving 30% of his sentence, he became eligible for early release in April, 2001. *Id.* at p.15. The Tennessee Department of Correction, however, informed Plaintiff that he would have to flatten out his sentence

or serve 100% of his sentence and could be eligible for release in October, 2012. *Id.* at Exhibit 5. Plaintiff claims that the defendant violated his right to due process by miscalculating his release eligibility date.

Because the relief in the action could result in Plaintiff's relief, Plaintiff must first exhaust his remedies under 28 U.S.C. § 2254. In Preiser v. Rodriguez, 411 U.S. 475, 500 (1973), the Supreme Court held that, "when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." (emphasis added).

Because Plaintiff's Section 1983 is premature, the Plaintiff fails to state a claim upon which relief can be granted. The Court must dismiss this action *sua sponte*. 28 U.S.C. § 1915(e)(2).

An appropriate order will be entered.

  
WILLIAM J. HAYNES, JR.  
United States District Judge  
10-29-08